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THE PRIVILEGES OF AMBASSADORS AND FOREIGN MINISTERS.

THE United States receives diplomatic representatives from thirty-seven nations and accredits her representatives to them in return. Six of these on each side are of the highest rank, namely, "Ambassadors Extraordinary and Plenipotentiary," being those received from and accredited to the five great powers of Europe, Austria-Hungary, Germany, Great Britain, Italy and Russia, and to our sister Republic of Mexico. The rest are almost without exception "Envoys Extraordinary and Ministers Plenipotentiary," standing in the second rank of "*Les Employés Diplomatiques*," to use the term adopted at the Congress of Vienna (1815) where the relative rank was determined which attaches to these different offices.

Chargés d'affaires constituted a third and lower class, and by the Congress of Aix-La-Chapelle (1818) an additional class ranking between the second and third above mentioned were recognized, namely, Ministers Resident, accredited to sovereigns.¹ Since in theory of International Law all nations are equal² one to another, the Congress of Vienna further provided that diplomats in each class should take rank "*d'après la date de la notification officielle de leur arrivée*," in other words, by seniority in service at the seat of government to which they are accredited.³ A diplomatic representative is commonly attended by a corps of secretaries, counselors, attachés, often civil, military and naval. He and they are often accompanied by families and servants, and this entire alien body

¹ Taylor's International L., Sec. 277. Calvo, *Le Droit International*, Tome 3, p. 183. In re Baiz, 135 U. S. 403; see p. 422.

² Taylor, *Int. Law*, Sec. 282.

³ This is the practice of the United States. 1 Wharton's *Dig. Int. L.*, p. 625; Calvo, *Le Droit International*, Tome 3, p. 190 note. The writer is so advised by the Department of State, by letter of Dec. 1, 1904.

claims, and, by the law of nations and of the United States, is entitled to great privileges and exemptions.

The circumstance that Mr. Gurney, third secretary to the British Embassy, having been recently arrested at Lennox, Mass., for driving his motor car upon the highway at an unlawful speed, claimed his diplomatic exemption, excited surprise. Many, even among lawyers, did not realize that he was plainly and absolutely entitled to such exemption. Unfortunately the Justice of the Peace before whom he was brought, and the prosecuting officer, were equally ignorant, and he was detained and fined for contempt of court in refusing to plead.⁴ The Governor of Massachusetts and Secretary of State of the United States intervened. Ample apology was made, the fine was remitted, and the matter was thus amicably adjusted. Mr. J. Mortimer, an attaché of the American legation in St. Petersburg in 1859, was arrested for violating an ordinance against smoking in the streets of that city. He paid his fine and did not disclose his diplomatic status, and this the *London Law Times* commends.⁴

The *Law Times* mentions that in the campaign against furious motor driving in Dublin "The last person to fall into the hands of the police was the American Consul in Dublin, who had been summoned and fined. It was suggested rather than put forward that his international character gave him some sort of immunity, but of course such a contention could not be raised for a moment in the case of a consul," citing and amply supporting its opinion by Hall's *International Law* (Ed. 1904) p. 321.

Apropos of the arrest of Mr. Gurney, it may be recalled that, while Secretary Hay was our representative at the court of St. James, his son was arrested, I think, for some irregularity in riding his bicycle upon a foot-path, but was promptly released on account of the exemption belonging to him as a member of the family of a foreign minister.

Heralds and ambassadors were inviolate by the law of the ancient Greeks and Romans, being regarded as having a sacred character and under the protection of the Gods.⁵ A violation of their rights was not only "unjust, but impious by the confession of all."⁶ Not even in reprisal for the wrongs of the Roman ambassadors would Scipio permit the rights of the ambassadors of Carthage to be

⁴ *Law Times* (London), Oct. 8, 1904, p. 513. Calvo says that a foreign minister ought to conform to all police regulations not incompatible with his dignity and character, but in case of contravention the doctrine of extritoriality prevents local proceeding against him (3 *Droit Inter.*, p. 323-4.)

⁵ 1 Halleck's *Inter. Law*, 3.

⁶ Grotius, *De Jure Belli et Pacis*, V. 2, Ch. 18, Sec. 1.

violated, but, when the Carthagenians were brought before him and he was asked "what was to be done with them," answered, "Nothing like what the Carthagenians had done." Livy adds that he said "that he would do nothing unworthy of the institutions of Rome."⁷

The attending company and the furniture and equipments, the entire entourage of the ambassador share his own inviolability, as the ancient formula ran, "King, do you make me the royal messenger of the Roman people, with my company and equipments."⁸ Grotius says profane history is full of wars undertaken on account of ambassadors being ill-used, that Scripture mentions the war undertaken by David against the Ammonites on this account, and Cicero says there is no juster cause of war.⁹ The Turks only among the nations of Europe long disregarded this civilized usage, and even in 1806 the British minister at Constantinople had to secretly withdraw to avoid torture and death,¹⁰ although it seems that the Koran teaches the sacredness of embassies.¹¹ The murder of the German minister, Baron Von Ketteler, and the attack on the legations at Peking "stand happily alone of recent years as a violation of the immunity of diplomatic agents on the part of a nation claiming to be regarded as civilized."¹²

Right of Innocent Passage. (Jus Transitus Innoxii).

The ordinary rule is that the envoy of a sovereign is accorded the "right of innocent passage through a friendly third state in going to and returning from that to which he is accredited."¹³ Phillimore gives many (none recent) instances in which this rule has been violated, and Hall shows with how many limitations it is surrounded.¹⁴

In 1854 France refused to Mr. Soulé, a Frenchman by birth but a naturalized citizen of the United States and its representative accredited to the court of Spain, the right of visiting Paris on his passage through France. Mr. Soulé was stopped at Calais, and while the right of passage was conceded, that of sojourn was denied.¹⁵

Hall, whose views on this subject and some others often seem

⁷ Grotius, *De Jure Belli et Pacis*, V. 2, Ch. 18, Sec. 7.

⁸ Grotius, *de Jure Belli et Pacis*, V. 2, Ch. 18, Sec. 8.

⁹ *Id.*, Sec. 11.

¹⁰ Taylor's *Int. Law*, Sec. 273.

¹¹ Phillimore, V. 3, p. 190.

¹² Wheaton's *Int. Law*, Ed. 1904, p. 333.

¹³ Taylor, *Int. Law*, Sec. 293. Calvo, *Le Droit International*, Tome 3, p. 201. Phillimore, V. 3, p. 210.

¹⁴ Hall's *Int. Law* (Ed. 1904), p. 309.

¹⁵ Hall's *Int. Law* (Ed. 1904), p. 309. Calvo, *Le Droit Int.*, Tome 3, p. 327.

rigorous, and especially opposed to those of the courts or jurists of the United States, thinks there is slight obligation to secure the minister from the operation of local laws on his journey, through a third state, though he shows a difference of opinion upon this subject.¹⁶

The United States seems to respect in the transitory diplomat much the same exemptions as those accorded to envoys accredited to its own government. Thus while Guzman Blanco, the envoy of Venezuela to France, was in New York, waiting to sail for France, summons was served on him in a local court and, on his default, a judgment of over two million was entered against him. This was, in 1889, set aside by the courts of New York on the ground of the diplomatic exemption of Blanco as a foreign envoy passing through a friendly state.¹⁷

General Henderson, minister of the Republic of Texas to France, on his return from the latter country was arrested for debt in New York while passing through. The court discharged him on his privilege, and held that the want of a passport made no difference.¹⁸ Such free transit may be demanded even through a blockading squadron as was held by Mr. Seward in 1866.¹⁹

These cases show the rule where the representative is passing through a country friendly to his own.²⁰ If, however, the ambassador touches the territory of a country at war with that which accredits him, his right of innocent passage can not be claimed, and it seems he may be detained as a prisoner of war. So, in the famous case of Maréchal de Belleisle in 1744 when he was going as the ambassador of Louis XIV to Berlin, by a mistake of his guides he unwittingly touched the soil of Hanover, which, with England, was at war with France. He was seized and sent to England as a prisoner of war. The arrest was never complained of as illegitimate and is commonly cited as lawful.²¹

A diplomat accredited to one belligerent by a neutral state, our country claims, has full rights of inviolability and even freedom of correspondence through the lines of the other belligerent. Thus, during the siege of Paris the late Hon. Elihu Washburn, our minister to France, desired to send through the German forces a messenger with a bag of dispatches to London. It was required as a

¹⁶ Hall's Int. Law (Ed. 1904), p. 309-10. Phillimore, V. 3, p. 208.

¹⁷ Wilson v. Blanco, 56 N. Y. Super. Ct. 582. Scott's Cases on Int. Law, p. 206.

¹⁸ Holbrook v. Henderson, 4 Sandf. 626.

¹⁹ Wharton's Dig. Int. Law, Vol. 1, p. 658.

²⁰ Phillimore, V. 3, p. 210, where Vattel, Wheaton, and many authorities are collected.

²¹ Hall's Int. Law (Ed. 1904), p. 311. Calvo, Le Droit Inter., Tome 3, p. 201. Phillimore, Vol. 3, p. 210.

condition that the contents of the bag be unsealed. The American minister at Berlin was directed to protest and to claim the right by international law to maintain a secret and confidential diplomatic correspondence notwithstanding the state of siege,²² and an apology and admission of the right seem to have been received from Count Bismarck.

Calvo, with his usual thoroughness, shows that this privilege was accorded Mr. Washburn alone, and denied to all other representatives and that this was explained by the fact that he had under his protection at this time the subjects and interests of Germany in Paris.²³ It will be recalled that for such services to Germany Mr. Washburn was offered a decoration by the Emperor William and on declining that was presented with a splendid portrait of the Emperor painted by the court painter.

Hall thinks the privilege claimed must be subject to the necessities of war and that it rests rather on comity than settled right.²⁴

Obligation to Receive a Diplomat.

The general rule is said to be that a state is not at liberty to refuse to receive a diplomatic representative from another duly sent. However, refusal is allowed if special reason can be shown. Such reason may arise, 1st, from the general situation, as the fact that receipt of such representative would imply acquiescence when the receiving nation is unwilling to acquiesce; 2nd, from the fact that the status, conduct or character of the person sent is unsatisfactory to the sovereign to whom he is accredited.

Thus England refused to receive a legate from the Pope even when he was still a temporal sovereign. The Pope refused to receive Prince Hohenlohe as ambassador from Germany in 1875 because the prince was also a cardinal, and so a member of the curia.

In 1832 the Tsar Nicholas refused to receive Sir Stratford Canning, yet England continued him for three years as titular ambassador at St. Petersburg without his going to Russia.

In 1885 Italy refused to receive a gentleman named by the United States as its minister, on the ground that he had inveighed against the destruction of the temporal power of the Pope. He was then accredited to Austria and that government objected to receive one who had given umbrage to an allied power. It is said that the real reason for the latter's objection was that it was believed, apparently under a misapprehension, that he was married to a Jewess by civil

²² Taylor's Int. Law, Sec. 296.

²³ Calvo, *Le Droit Inter.*, Tome 3, p. 330.

²⁴ Hall's Int. Law (Ed. 1904), p. 312.

contract only, and that his social position in Vienna would be untenable. The United States in disgust left the legation to a chargé d'affaires.

In 1891 China objected to Mr. Blair, appointed as our minister, because it believed that he had bitterly abused Chinese laborers and been conspicuous in helping to pass the Chinese exclusion act. Mr. Blair placed his resignation in the hands of the President and a successor was appointed.²⁵

The notes to Hall²⁶ show that the special ceremonial rights ("*Graves riens*" as he calls them) of diplomats have given rise to infinite disputes, and that they have been discussed with superfluous elaborations, especially by German writers, Moser having written a treatise on an ambassador's "*Recht mit Sechs Pferden zu fahren*."

Calvo carefully enumerates the places in which they are to be seated at ceremonials and designates the order in which they should be marshalled in processions.²⁷

Right of Solemn Entry.

The old right of solemn entry is generally obsolete though still, with diminished state, observed at Madrid.²⁸

It is recorded that an armed conflict raged on Tower Hill, London, in 1661 between the followers of the French and Spanish ambassadors on the occasion of the Solemn Entry of the Swedish ambassadors, due to the representatives of France and Spain each attempting to follow next to the king in the procession.²⁹ When an ambassador arrives by sea he is still saluted by the artillery of the forts.³⁰

Exemption from Local Law.

The rule seems settled that a diplomatic representative, in the country to which he is accredited, is exempt from the local laws and jurisdiction both criminal and civil, he being considered as if all the time within the jurisdiction of his own country and subject to its laws.

In cases of great gravity he may, however, be detained in custody until he can be sent home.³¹

²⁵ Hall's Int. Law (Ed. 1904), 299, 301. Calvo collects many cases of refusal to receive on grounds personal to the envoy. Le Droit Inter., Tome 3, Sec. 1324. Taylor's Int. Law, Sec. 290.

²⁶ Hall's Int. Law (Ed. 1904), p. 303.

²⁷ Calvo, Le Droit Inter., Tome 3, Sec. 1359.

²⁸ Taylor, Int. Law, p. 321.

²⁹ Id., Note 21. Ward's Hist. Law of Nations II, 458-462.

³⁰ Calvo, Le Droit Inter., Tome 3, p. 210.

³¹ Hall's Int. Law, p. 172. Taylor's Int. Law, Sec. 299. See Calvo, Le Droit Inter., Tome 3, p. 295 et seq.

When the foreign envoy enters the state to which he is accredited he is exempt from the payment of duties on articles for the use of himself or his family, but this is sometimes limited to a fixed sum.³²

He may worship in his private chapel according to his national faith, though it be in general not tolerated by the local law.³³

When he dies his estate is not subject to distribution according to the law of the state to which he is accredited, but to that of his home country and it may be withdrawn without payment of any tax or detraction.³⁴ After his death his family are commonly accorded privileges like his own for a limited time.

Leslie, Bishop of Ross, the minister of Mary Queen of Scots at the English court, being seized and charged with high treason against Elizabeth, escaped death by stoutly claiming his privilege as a foreign minister even though Mary had been deposed.³⁵ Mendoza, the Spanish ambassador to England, having conspired to dethrone the queen was in 1584, on the advice of eminent civilians, simply ordered to depart the realm and not put to death, complaint being preferred against him at the Spanish court.³⁶ In 1653 Don Pantaleon Sa, brother of the Portuguese ambassador at London, with fifty followers, attacked an Englishman, Col. Gerhard. In the mêlée a bystander was accidentally killed. The ambassador intervened for his brother, but it appearing that the latter was not commissioned as one of the embassy (though it appeared that he was presently to replace the brother as ambassador) Cromwell had him tried and executed for sedition and murder.³⁷

In 1708 the ambassador of Peter the Great in London was taken out of his coach for a debt of fifty pounds by the sheriff of Middlesex. He gave bail and complained to Queen Anne. The privy council examined those concerned in the arrest and seventeen were committed to prison and most of them prosecuted in the Queen's Bench where they were convicted of the fact, and the question of the criminality of the act was reserved and never decided. Peter demanded that they all be punished by death and could not understand the noble and memorable reply of the Queen (so dear to all who live under English law) "*that she could inflict no punishment upon the meanest of her subjects unless warranted by the law of the land.*" However, to avert a Russian war and stop the clamor of the foreign ministers, parliament passed an act to punish such acts

³² Wheaton's Int. Law, Sec. 242.

³³ Wheaton's Int. Law, Sec. 248.

³⁴ Id., Sec. 251.

³⁵ Case of Leslie, Bishop of Ross. Ward's Law of Nations II, 486. Snow's Cases, 83.

³⁶ Mendoza's Cases. Ward's L. of Nat. II, 522. Snow's Cases, p. 85.

³⁷ Case of Da Sa. Ward's L. of Nat. II, 537. Snow's Cases, p. 86.

in future. A copy of this, "elegantly engrossed and illuminated," together with a letter from the Queen was sent by an ambassador extraordinary to Moscow, who presented it, kneeling, to the Tsar who was at last satisfied, and the offenders were discharged at Peter's request without further prosecution.³⁸

The statute (which has been substantially re-enacted by the congress of the United States) declares the arrest contrary to the law of nations and provides penalties for executing process against the goods, person or servants of an ambassador. The statute is always regarded as merely declaratory of the law of nations, as recognized by the common law.

In 1717 Count Gyllenberg, Swedish ambassador at London, was suspected of conspiracy to dethrone the King. He was arrested, his cabinet broken open (his lady having refused to give up the keys) and his papers searched. Some of the foreign ministers protested, but, on explanation as to the facts, all were content except Montleone, ambassador of Spain.³⁹

Lord Mansfield held in 1767 "the privileges of public ministers and their retinue depend upon the law of nations which is part of the common law of England," and that the Statute of 7 Anne for their protection did not alter it, but merely declared it. He held the servants of a minister must be *bona fide* servants to share such privileges and that the diplomatic character of the master must be proved, and that the servant was such *bona fide* servant at the time of arrest, or he could not be discharged from arrest for debt on his privilege.⁴⁰

In 1772 Baron de Wrech, minister of Hesse Cassel at Paris, on his recall was refused a passport until he paid his debts. All the corps diplomatique remonstrated but le Duc d'Aiguillon, in a learned memoir, drawn up by M. Pfeffel, showed that the practice was warranted by the greatest writers and by the practice of Hesse Cassel itself. The Landgrave made an arrangement with the Baron's creditors and he at last was given his passport.⁴¹

In 1778 Prince Cellamare, Spanish ambassador at Paris, conspired against the Regent and joined in a plot to seize his person. The Prince was seized on his way to Madrid and his papers searched. The other ambassadors rejected his appeals for their interference, and the Regent sent them a circular letter showing the facts which justified the course pursued. Cellamare was imprisoned in the

³⁸ Blackstone's Com., Bk. I., Ch. VII., p. 255. Snow's Cases, 89, and *Triquet v. Bath*, 3 Burr. 1478.

³⁹ Gyllenberg's Case, Ward's L. of Nat. II., 548. Snow's Cases, p. 87.

⁴⁰ *Heathfield v. Chilton*, 4 Burr. 2015. Scott's Cases int. Law, pp. 6 and 189.

⁴¹ *Marten's Causes Célèbres*. Snow's Cases, 97. Phillimore, Vol. 2, p. 223.

Chateau De Blois till the French ambassador at Madrid reached French soil, and then conducted to the Spanish frontier.⁴²

Mr. Wheaton, the eminent writer on International Law, being the minister of this country to Prussia, claimed that his household goods were not subject to process, kindred with distraint for rent, for damages claimed by his landlord. The Prussian government decided against his exemption, basing its ruling on the claim of the landlord arising from contract. Our government supported the views of Mr. Wheaton and the matter remained unsettled.⁴³

In 1854 the Common Pleas held that M. Drouet, first secretary of the Belgian legation at London, had all the privileges of a foreign minister and did not lose them by engaging in commercial transactions, but seems to hold where he has appeared in a suit it may go to judgment though no execution could be levied on him or his goods.⁴⁴

In 1885 the Queen's Bench held that an attaché forms part of the regular suite of an ambassador and shares his exemptions along with his family and servants, and is therefore not liable to pay parochial rates for his dwelling.⁴⁵ And the exemptions civil and criminal in general extends to his family and servants as well on the ground that this is necessary to his freedom and dignity, but English authorities claimed jurisdiction over the coachman of Mr. Gallatin, our minister in London, for an assault committed outside the house of his master. The English practice is considered exceptional, however.⁴⁶

As to whether the official position of a foreign minister will shield him from civil suit in the country to which he is accredited so long as his person, dwelling, entourage, comfort and dignity are not affected the authorities are divided and are collected by Hall.⁴⁷

In Spain and Portugal it seems an ambassador is exempt from suit for debts contracted before the commencement of his mission, but not for those incurred during its continuance. "In Russia the ministry of foreign affairs is the sole medium for reclamation against a diplomatic agent."⁴⁸

⁴² Prince Cellamare's Case, *Marten's Causes Célèbres* 1, 149. *Snow's Cases*, p. 88.

⁴³ Wheaton's Int. Law. *Snow's Cases*, p. 94.

⁴⁴ *Taylor v. Best*, 14 Com. Bench, 487. *Snow's Cases*, 90. See also *Magdalena Steam Navig. Co. v. Martin*, 2 E. & E. 94.

⁴⁵ *Parkinson v. Potter*, 16 Q. B. D. 152. *Scott's Cases*, 192.

⁴⁶ Hall's Int. Law, pp. 178-9. Wharton's Dig. Int. Law, Vol. 1, p. 650.

⁴⁷ Int. Law, p. 174.

⁴⁸ Hall's Int. Law, p. 177. In 1886 Mr. Bayard, Secretary of State of the United States, wrote to Mr. Woolsey as follows:

"A diplomatic representative possesses immunity from the criminal and civil jurisdiction of the country of his sojourn, and cannot be sued, arrested, or punished by the law of that country. Neither can he waive his privilege, for it belongs to his office, not to

Exempt from Testifying.

As a part of the exemption of a foreign minister from local law he cannot be compelled to testify in a local court.

Thus in 1856 Mr. Dubois, Dutch minister at Washington, was deemed a necessary witness in a prosecution for homicide. Through the Secretary of State he was requested to appear. On the unanimous advice of his colleagues he refused. After negotiations between the two governments, by his king's orders, he offered to give his declaration under oath at the state department without cross-examination. It was not taken, as it plainly would not have been admissible against the accused who, under our constitution, had a right "to be confronted with the witnesses against him."

Senor Camacho, the minister of Venezuela, was an eye-witness of the assassination of President Garfield and, by the friendly instruction of his own government, waived his privileges and appeared, was sworn and testified upon the trial of Guiteau, the assassin, a precedent far more commendable than the former.⁴⁹

For a threat made in the French legation to assault the Secretary the assailant was fined \$500 and imprisoned two years.⁵⁰

But it was held in case of indictment for assault on a member of the Spanish legation that if the Spaniard began the assault the defendant was excused for his subsequent assault.⁵¹

In 1836 Madison Jeffers, a constable, who removed an escaped slave who had taken service with Mr. Bankhead, Secretary of the British Legation at Washington, from the Secretary's house and returned him to his master, was, for violation of the privileges of the British envoy, removed from office.⁵²

In 1865 the Court of Cassation of France held that a Russian who made a murderous attack upon a fellow Russian attached to the legation in the Russian Embassy in Paris was subject to prosecution in the French courts, and that only the ambassador and his entourage were exempt therein from local law.⁵³ The Russian ambassador, Baron de Budberg, claimed that, on the doctrine of the

"himself. It is not to be supposed that any representative of his country would intentionally avail himself of this right to evade just obligations, incurred either by himself or the members of his mission."

"If, however, a diplomatic agent holds, in such foreign country, real or personal property, aside from that which pertains to him as a minister, it is subject to the local laws." Wharton's Dig. Int. Law, V. 1, 653.

⁴⁹ Guiteau's Trial. Wheaton's Dig., 669. Scott's Cases, p. 196. Calvo, Le Droit Inter., Tome 3, p. 319.

⁵⁰ *Republica v. De Longchamps*, 1 Dall. 111. Snow's Cases, p. 104.

⁵¹ *U. S. v. Liddle*, 2 Wash. C. C. 205. *U. S. v. Ortega*, 2 Wash. C. C. 531. Snow's Cases, p. 104.

⁵² *U. S. v. Jeffers*, 4 Cranch C. C. 704. Snow's Cases, p. 140.

⁵³ *Nitchencoff's Case*, 10 Solic. L. J. 56. Scott's Cases, p. 197.

extritoriality of his embassy, his own country alone had jurisdiction, but in the end Russia admitted the jurisdiction of the French courts.⁵⁴

In general the diplomatic agent may claim his immunities if he is received, even though a subject of the receiving nation.⁵⁵ And while his exemptions continue it seems statutes of limitation do not run against his creditors.⁵⁶

The children of a diplomat born in the state to which he is accredited are not its subjects, but are considered as native to the state he represents.⁵⁷

Legalization of Wills, Contracts and Marriages.

Hall says "that notwithstanding the general rule that acts intended "to have legal effect, in order to have such effect in the country "where they are done, must conform to the territorial law,—a diplomatic agent may legalize wills and other unilateral acts and contracts, including perhaps contracts of marriage, made by or "between members of his suite. It is said by some writers that a "diplomatic agent may also legalize marriages between subjects of "his state, other than members of his suite, if specially authorized "to do so by his sovereign; but this view is unquestionably erroneous. There is no general custom which places a state under "obligation to recognize such marriages, and in some states they "certainly will not be recognized."⁵⁸

In a note he collected conflicting decisions on the continent of Europe and says, "Practice in the matter is in a state of discreditable confusion and uncertainty, the effects of which have been painfully felt by not a few women."

Criminal Jurisdiction.

Formerly the ambassador exercised criminal jurisdiction over his suite. Thus the great Sully in 1603 while French ambassador at London, sentenced to death, after trial, a servant of his who had killed a man in a brothel. The execution of the judgment was remitted to the English authorities and James the First pardoned the offender. Calvo finds no warrant for the act of either king or ambassador. But an ambassador of Spain in Venice hung one of his servants from his window, and another French ambassador in London did the like.⁵⁹

⁵⁴ Calvo, *Le Droit Inter.*, T. 3, p. 309.

⁵⁵ *Macartney v. Garbutt* (1890), 24 Q. B. D. 368. *Scott's Cases*, 196.

⁵⁶ Hall's *Int. Law*, 176. *Musurus Bey v. Gadban*, L. R. [1894], 1 Q. B. 535.

⁵⁷ Hall's *Int. Law*, p. 174.

⁵⁸ Hall's *Int. Law* (Ed. 1904), p. 185-6.

⁵⁹ Calvo, *Le Droit Inter.*, Tome 3, p. 334.

This power has long been considered obsolete.⁶⁰

The modern practice is for the chief of the embassy to send his offending subordinates home for trial.⁶¹

Protection from Personal Indignity.

Not only is the foreign minister exempt from local process, but by the law of nations he is peculiarly protected not only from violence but also from insults such as a libel.⁶²

The Right of Asylum.

The right of receiving in the legation and protecting from seizure persons charged with crime has been exercised in modern times, only, it is believed, in the territory of those nations whose government is so unstable that humanity has required it, and this rather than law has justified it; and even in those regions it has been exercised only as to political offenders. This country recognizes no such right within its territory, neither do the principal nations of Europe. Therefore, I pursue the topic no further, making reference to the excellent article on the subject by my friend and colleague, Professor Barry Gilbert, in the *Harvard Law Review*.⁶³

Conclusion.

It remains only to observe, in conclusion, that the high honor, great privileges and important exemptions accorded to diplomatic representatives in all civilized countries, widely in ancient and uniformly in modern times, rest upon broad foundations of expediency and utility. No other way has been found by which official intercourse between nations can be maintained on such footing of security, dignity and freedom as to make it possible or useful. It cannot be said that the effect of such privileges and exemptions upon the representatives themselves is always favorable. They are, however, amenable to their own governments for all their acts and in case of misconduct complaint can be freely made by the nation to which they are accredited. Our own country claims for its envoys abroad all the rights and privileges accorded by international law, and it must neither deny nor grudgingly accord like rights to those of other nations within its borders.

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⁶⁰ Hall's Int. Law, p. 179. Calvo, *Le Droit Inter.*, Tome 3, p. 334.

⁶¹ Calvo, *Le Droit Inter.*, Tome 3, p. 335.

⁶² Wharton's *Dig. Inter. L.*, Vol. 1, p. 642.

⁶³ June, 1901, Vol. 15, p. 118.